IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION No: 22275 of 2004

Between:

B.Ekanthamaiah, S/o.Naganna,
Engilibanda (V), Gooty (M), Anantapur District.

..... PETITIONER

AND

1 The Joint Collector, Anantapur, Anantapur District.
2 The Revenue Divisional officer, Anantapur, Anantapur

District.
3 The Mandal Revenue officer, Gooty, Anantapur District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in nature of writ of mandamus declaring the action of 1st respondent in not disposing of the appeal which is filed by before him against the orders of the 2nd respondent passed in Rc.No.D1/CS/989/04, dt.2-8-2004 and the action of the 2nd respondent in not completing the enquiry initiated by him as illegal, arbitrary and consequently direct the 2nd respondent to complete the enquiry as expeditiously as possible and further direct the respondent to continue the petitioner as FP shop dealer of Engilibanda village, Gooty (M) of Anantapur District, pending disposal of enquiry before the 2nd respondent.

Counsel for the Petitioner: MR.K.SITA RAM

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the admission state, made the following:

ORDER:-

The petitioner is a fair price shop dealer of Engilibanda village, Anantapur District. The second respondent suspended the authorization of the petitioner through show cause notic-cum- suspension order, dated 2.8.2004. Aggrieved thereby the petitioner filed an appeal together with an application for grant of stay, before the first respondent. On 11.8.2004, the first respondent disposed of the appeal, but refused to interfere with the order of suspension. Hence this writ petition.

2. Heard learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

3. The authorization of the petitioner is suspended on the allegations such as failure to obtain signatures of white card holders, alleged distribution of kerosene once in three months by collecting higher price, distribution of only 16 Kgs. per month instead of 20 Kgs. to a card holder and using improper weighments. The appeal preferred by the petitioner was disposed of with the following observation: -

> "upon perusing the grounds of appeal and also the orders of Revenue Divisional Officer, Anantapur passed in the reference 1st read above, it is felt that there is no need to interfere with the orders of the Revenue Divisional Officer, Anantapur. Hence, the case is hereby remanded to the Revenue Divisional Officer, Anantapur for disposal after giving adequate opportunity to the dealer to explanation".

4. A perusal of the same discloses that except referring to the grounds and order passed by the R.D.O., the first respondent did not apply his mind to the various contentions raised by the petitioner. Further, he does not appear to have appreciated

the circumstances under which the matter can be remanded by an appellate authority. This Court gains an impression that the first respondent did not pay proper attention either to the facts of the case or to the fundamental procedure.

5. Remand of a matter by an appellate authority would arise if only the order under appeal is set aside. The very fact that the matter is remanded proceeds on the footing that the order appealed against, is set aside. Remanding the subject matter to the primary authority without interfering with the order under appeal, is in fact contradiction in terms. The first respondent who is vested with appellate powers under various statutes ought to have maintained this distinction.

6. Further, the allegations against the petitioner are too general and vague in nature. The alleged short supply to the white card holders, unsubstantiated allegations as to the timing of running the shop, and the quality of weighments, cannot constitute the basis for severe action of suspension.

7. Hence the writ petition is allowed and the order of the first respondent is set aside. Consequently, the suspension of the authorization of the petitioner shall also stand set aside. The petitioner claims to have filed explanation. The second respondent shall pass appropriate final orders duly taking into account the explanation submitted by the petitioner. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dated : 06th December, 2004

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To

1 The Joint Collector, Anantapur, Anantapur District.
2 The Revenue Divisional officer, Anantapur District.

3 The Mandal Revenue officer, Gooty, Anantapur District.

4 2 CCs to the G.P. for Civil Supplies, High Court of A.P., Hyderabad (OUT).

5 2 CD copies.